

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2090 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
VIKRAMSHI LAKHA AHER

Versus

PARBAT RAMSHI GOZIYA

-----  
Appearance:

MR DV MEHTA for Petitioner

MR SURESH M SHAH for Respondent No. 1

SERVED for Respondent No. 5,27,28,29

-----  
CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 05/08/96

ORAL JUDGEMENT

1. This CRA is directed against the judgment and order, dated 17/10/95 passed by the Assistant judge, Jamnagar in Civil Misc.Appeal No.66/94 whereby the appeal came to be dismissed because necessary parties who ought to have been joined in appeal have not joined. The application made before the lower appellate court for bringing such parties on record being Exh.19 came to be

dismissed on the ground that there was no sufficient cause shown which prevented the plaintiff from joining defendants 3 to 29 in Civil Misc.Appeal and in the absence thereof the application at Exh.19 can not be granted. Since the application itself was dismissed the appeal was also dismissed on the ground that it was not maintainable for want of necessary parties.

2. The petitioner-original plaintiff who instituted Reg.Civil Suit No.18/94 in the court of Civil Judge (JD) at Kalyanpur for injunction against present respondent Nos 1 & 2 only, interalia, praying that those two respondents have no right of way over their parcel of land bearing S.no.2/1/1/1/1 admeasuring 2 acre 32 gunthas In such suit they also applied for temporary injunction. Respondent Nos 1 & 2 appeared, filed their written reply and pointed out that the land in question was a Government karaba land which being used as public way since times immemorial and that it was not the land of the plaintiff. It appears that in such suit respondent Nos 3 to 29 also applied for being impleaded as party defendants only, interalia, contending that they have right of way over the suit land and that the land was Government karaba land. Such application was granted and they were permitted to be impleaded as party defendants. After they were joined as party defendants and replies were filed by them the Civil Judge (JD) vide order dated 13.5.94 rejected the application for temporary injunction holding that the plaintiff has failed to establish prima facie case.

3. Against such order plaintiff preferred appeal and impleaded respondent Nos 1 & 2 as party respondents. When objection was taken to the maintainability of appeal for bringing necessary parties application at Exh.19 was filed for permitting them to join rest of the defendants. Such application was rejected by the lower appellate court which resulted into dismissal of Civil Misc.Appeal.

4. Being aggrieved by the said judgment and order the present CRA is filed and the learned advocate for petitioner, Mr.D.V.Mehta stated before the learned single judge that the notice may be issued only to respondent Nos 1 & 2 and not to rest of the respondents as they were not necessary parties. The court therefore issued notice to respondent Nos 1 & 2 only. The blunder in making such statement before the learned single judge is possibly based on written instructions given by the trial court advocate. However, such statement ought not to have been made, but in fact, presence of rest of respondents was absolutely necessary before this court as well as the

lower appellate court. Learned advocate for the petitioner is however absolved from his liability or responsibility of making such statement.

5. Mr.S.M.Shah, Ld.advocate for respondents has stated before this court that the respondents are also using the part of the suit land of the plaintiff as right of way and/or passage for village people as well as bullock carts etc. In view of the fact that the suit is of the year 1994 and part of the suit land being used by all the defendants and/or by village people the grievance of the plaintiff before this court that his entire standing crop is being affected is required to be proved. It is no doubt true that no such grievance was made before the lower appellate court. However, in the interest of justice without disturbing the order passed by the lower appellate court it would be just and proper to direct the trial court to appoint court commissioner to make on the spot investigation of S.No.2/1/1/1/1 of village Chur and in case entire parcel of land is being haphazardly used so as to prejudicially affect the standing crop of the plaintiff to demarcate specifically a right of way/passage through the suit land during pendency of suit only so as to permit the defendants and other people to pass by the suit property for their bullock carts, cattle etc through such demarcated land. The hearing of suit is expedited. The trial court is directed to decide the final hearing of the suit finally preferably by 31st July, 1997.

5. In the result, CRA fails subject to directions aforesaid. The Registrar is directed to issue writ of this judgment to the trial court at the earliest. Rule is discharged. No costs.

...